IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20622 of 2005

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHARMENDRA LILADHAR THAKKER - Petitioner(s)

Versus

DY. ENGINEER (O & M) P.G.V.C.L. & 1 - Respondent(s)

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Appearance :
MR BM VAISHNAV for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
MR PREMAL R JOSHI for Respondent(s) : 1,
NOTICE NOT RECD BACK for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/11/2005

ORAL JUDGMENT

1.Rule. Shri Premal Joshi, learned advocate waives service of rule on behalf of the respondents.

2.With the consent of the parties, the matter is taken up for final hearing today.

3.In this petition under Article 226 of the Constitution

of India the petitioner has prayed for quashing and setting aside the supplementary bill and the decision cum settlement of the appellate committee or alternatively for preparing the supplementary bill and modify the decision cum settlement of the appellate committee as per the method prescribed in Section 126 of the Electricity Act, 2003.

4. It appears from the record that being aggrieved by and dissatisfied with the supplementary bill issued by the respondents, the petitioner approached the Appellate Committee on deposit of certain percentage of supplementary bill which was required to be deposited so as to enable the petitioner to prefer an appeal and it appears that the said appeal came to be disposed of on the basis of the settlement on 19-5-2005. It is the case of the petitioner that the petitioner was compelled to sign the settlement and the petitioner was given threat that if the petitioner do not agree to pay the amount by way of installment in that case the appeal preferred by the petitioner will be dismissed and therefore the petitioner was compelled to sign the said settlement. It is also further submitted by the petitioner that as such, without prejudice to the rights and contention, the petitioner has already paid the entire amount of the supplementary bill. He has

also further submitted that as such the assessment was not in accordance with Section 126 of the Electricity Act, 2003 and/or the new Act of 2003.

5.Shri Premal Joshi learned advocate appearing on behalf of the respondents has disputed the aforesaid factum of compulsion on the part of the appellate committee to enter into the settlement. He has also further submitted that as such, the assessment which is made is in accordance with the provisions and in accordance with law.

6.Without going into larger question whether the alleged settlement was done by way of compulsion or not, however, considering the averments in the legal notice dated 1-7-2005 and considering the fact that as the entire amount of supplementary bill has already paid by the petitioner under protest, no prejudice will be caused to the respondents if the appellate committee is directed to decide and dispose of the appeal on merits as the petitioner is not agreeable for the settlement and to pay the amount by installments. However, it is made clear that this court has not gone into larger question on merits. It will be open for the petitioner to take all contentions on merits with regard to the applicability of Section 126 of the Act before the appellate committee.

7. For the reasons as stated above, the petition succeeds partly. The order cum settlement passed by the appellate committee dated 19-5-2005 is hereby quashed and set aside and the matter is remanded to the appellate committee for deciding the same afresh in accordance with law and on merits and after giving an opportunity to the petitioner. The amount which is already deposited by the petitioner would be subject to the ultimate outcome of the decision that might be taken by the appellate committee. It will be open for the parties to take all contentions which are available to them under the law before the appellate committee and the same may be considered by the appellate committee in accordance with law and on merits. It is however made it clear that this court has not expressed any opinion on merits of the case in favour of either party.

8. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J)

shekhar/-